... that a condition precedent to the invocation of the arbitrator on whatever grounds is that a difference between the parties should have arisen; and I think that must mean a difference of opinion before the action is launched either by formal plaint in the county court or by writ in the superior courts. Any contention that the parties could, when they are sued for the price of the services, raised then for the first time the question whether or not the charges were reasonable and that therefore they have a right to go to an arbitrator, seems to me to be absolutely untenable. If, in the ordinary course of things, some question had arisen between the parties which they wanted to arbitrate upon, and a submission to arbitration were agreed upon in this form - which very commonly is the form - 'that all matters in difference shall be submitted to AB', it would be a condition precedent to the arbitrator entering upon any form of inquiry there that the person who insisted that there was a difference should shew that the difference had arisen before the submission to arbitration was made. That is a matter which has been repeatedly decided, and I should think that no lawyer would hesitate to say that that is the true condition of the law.

The decision in *Lee Kee Seng's* case[3] also contained a passage taken from the judgment of Rowlatt J in *London & North Western Railway* v *Jones*[5] at p 38. That case was also concerned with s 5 of the English Act quoted above. Rowlatt J said:

... if there is a difference of any kind arising under the section before action, that matter must be decided by arbitration and *the courts have no jurisdiction to determine that difference* ... (Emphasis added).

In my opinion, the situation in *Lee Kee Seng's* case[3] was different from that in the present case. Having examined the authorities relied upon in that case, I did not think that *Lee Kee Sengs's* case[3] applied in the present case.

In the present case cond 6 must be read in relation to s 6 of the Arbitration Act. Section 6 clearly provides that an application for stay is made after legal proceedings have commenced. In *Heyman and Anor* v *Darwins Limited*,[6] the parties had included an arbitration clause in the contract. The arbitration clause stated, 'if any dispute shall arise between the parties ... in respect of this agreement ... the same shall be referred to arbitration in accordance with the provisions of the Arbitration Act 1889.' A dispute arose between the parties and the appellants commenced an action against the respondents claiming a declaration that the respondents had repudiated the contract. The respondents denied that they had repudiated the contract and applied to have the action stayed in order that it might be dealt with under the arbitration clause. The House of Lords held that the dispute fell within the terms of the arbitration clause and that the action ought to be stayed.

I respectfully agree with the decision of the House of Lords in *Heyman's* case.[6]

For the reasons stated above I allowed the defendant's application for stay of all proceedings in this action to enable parties to refer their differences to arbitration with costs.

Application allowed.

Solicitors: *Khoo & Sidhu*; *Yusuf Lee Pathma & Marbeck.*

Reported by *Yap Shao Sin*

Securicor Malaysia Sdn Bhd v Mohd Lazi bin Katan

HIGH COURT (JOHORE BAHRU) - CIVIL APPEAL NO 16-4A OF 1987
ABU MANSOR J
27 APRIL 1989

Labour Law - Dismissal of employee - Complaint made by employee to labour officer - Claim for sums including arrears of wages - Labour officer making order for payment of arrears of wages in purported compliance with Industrial Court Award - Whether labour officer had acted within jurisdiction - Employment Act 1955, ss 14 & 69 - Industrial Relations Act 1967, ss 20, 26, 33 & 56

The respondent, a security officer employed by the appellant, was dismissed from his employment for serious misconduct. The respondent then lodged a complaint to the Labour Office under s 69(1) of the Employment Act 1955, claiming: (i) the sum of $390 as salary in lieu of notice of termination; (ii) the sum of $389.99 as termination benefit; and (iii) the sum of $800 as arrears of salary for the year 1984-1985. A labour officer conducted an enquiry into the complaint and then made an order that the appellant pay the respondent the sum of $485 in purported compliance with Industrial Court Award No 50 of 1986. The appellant appealed against the order to the High Court. The first ground of appeal was that, as the complaint of the respondent arose out of his dismissal for misconduct and not out of a claim for wages, the labour officer in holding the enquiry had usurped the functions of the Director General for Industrial Relations and of the Industrial Court. It was contended therefore that the respondent had acted without jurisdiction as ss 20 and 26 of the Industrial Relations Act 1967 had made specific provisions regarding the hearing of complaints in all cases of dismissal. The second ground of appeal was that the labour officer had no jurisdiction to make the order as his doing so was in disregard of ss 33 and 56 of the Industrial Relations Act 1967 which provided the Industrial Court with jurisdiction to interpret and enforce its awards.

Held, allowing the appeal:

(1) The labour officer had no jurisdiction to decide on items (i) and (ii) of the claim but in fact he decided on the item (iii) of the claim after dismissing items (i) and (ii). To say that he decided on the validity of the dismissal of the respondent was not correct. In fact he decided on a claim for wages. The first ground of appeal therefore failed.

(2) The labour officer in hearing the complaint and deciding that the appellant was liable to pay the sum of $485 to the respondent under Award No 50 of 1986 was usurping the

function of the Industrial Court for it was clear that the respondent in order to make his claim must do so under either s 33 of the Industrial Relations Act (in respect of interpretation of an award) or under s 56 of the Act (in respect of a complaint of non-compliance with an award).

Cases referred to

1 *Nylex (M) Sdn Bhd* v *Alias bin Chek* [1985] 1 CLJ 195 (folld)
2 *Rajaretnam a/l Palaniandy* v *Amalgamated Properties & Industries*, Supreme Court Civil Appeal No 158 of 1986 (unreported) (folld)

Legislation referred to

Employment Act 1955 ss 14, 69
Industrial Relations Act 1967 ss 20, 26, 33, 56

T M Varughese for the appellant.
Respondent in person.

Cur Adv Vult

Abu Mansor J: The appellant appeals against the decision of the Labour Court, Kluang. Having heard arguments, I reserved judgment to a date to be fixed. I now give my judgment as follows. The facts of this case are the appellant is a company engaged in providing security services to customers. From 3 February 1982 the appellant employed the respondent as a security officer in the Batu Pahat office. On 1 January 1985 the respondent was duly transferred to their Kluang branch at his request. On 29 December 1985 the respondent while on duty was found to have committed a serious misconduct, the substance of which was that the respondent was found to be with a lady in the company premises whilst he was on duty. He was subsequently called to the appellants' Johore Bahru office. There was an enquiry by the company after which he was dismissed on 1 January 1986. The dismissal was under s 14 of the Employment Act 1955 since it was as a result of a disciplinary action on the respondent. After his dismissal, the respondent then lodged a complaint to the Kluang Labour Office under s 69(1) of the Employment Act 1955 on 9 July 1986. The Kluang Labour Office held an enquiry and made a decision, and made an order on 2 October 1986 in Borang C arrears of pay to the respondent for $485 in purported compliance with Award No 50 of 1986 dated 8 March 1986.

The first ground of appeal by the appellant was that since the labour officer knew or must have known that the complaint of the respondent was arising out of a dismissal for misconduct and not a claim for wages as such the holding of the inquiry by the labour officer was therefore usurping the functions of the Director General of the Ministry of Labour and of the Industrial Court. Such inquiry was done without the labour officer having jurisdiction since s 20 and s 26 of the Industrial Relations Act 1967 had made specific provisions in hearing complaints in all dismissal cases whether for members or non-members of a trade union. Counsel therefore submitted that the labour officer entering into inquiry on the respondent's complaint and making a subsequent order was therefore doing so without jurisdiction. He cited the case of *Nylex (M) Sdn Bhd* v *Alias Bin Chek*[1] where Harun Hashim J (as he then was) held that the power of the Director General (including the assistant director) under s 69 of the Employment Act is limited to matters concerning wages only and the words 'any dispute' in the section must be read conjunctively with the words 'to pay any wages due'. The assistant director then should cease to deal with the matter when he realized it was a dismissal under s 14(1)(a) of the Employment Act, a matter already left out of s 69(3) of the said Act. Counsel also cited *Rajaretnam a/l Palaniandy* v *Amalgamated Properties & Industries*,[2] where the decision in *Nylex (M) Sdn Bhd* v *Alias bin Chek*[1] was approved.

With respect, I find the appellant has not succeeded on this point. This court is bound by the authority of *Rajaretnam a/l Palaniandy v Amalgamated Properties & Industries*[2] above only if the inquiry held by the labour officer under s 69(1) of the Employment Act 1955 is with the specific purpose of determining the validity of the dismissal of the employee by the employer. This matter before me although it arose out of a complaint as a result of a dismissal under s 14(a) of the Employment Act 1955, it is nonetheless clear to me that the claim of the appellant before the Director of Labour was for three items:

(i)	Gaji ganti notis	$ 390
(ii)	Faedah penamatan kerja	$ 389.99
(iii)	Tunggakan gaji bagi tahun 1984-1985	$ 800
		$ 1,579.99

Following the case of *Nylex (M) Sdn Bhd* v *Alias bin Chek*[1] and the case of *Rajaretnam a/l Palaniandy* v *Amalgamated Properties & Industries*[2] I have no hesitation to say that the labour officer has no jurisdiction to decide items one and two but he in fact decided on item three after dismissing items one and two:

> Saya dari itu memerintahkan pihak kena tuntut membayar kepada si pengadu tunggakan perbedzaan gaji berjumlah $485 sebagaimana yang dituntut mengikut Award No 50 of 1986.

Later on the officer said he was satisfied with the dismissal and held:

> Dari itu saya membuat keputusan supaya tuntutan si pengadu untuk menuntut gaji ganti notis dan faedah penamatan kerja dibuang.

It is clear therefore that to say that the Director of Labour decided, for the purpose of this appeal, the validity of the dismissal of the respondent is not quite accurate. He in fact decided on a claim to wages. With respect, I find the appellant has not succeeded in his first ground of appeal because what was decided by the director apart from dismissal was also a question of wages in the form of

difference of pay in accordance with the terms of Award No 50 of 1986. The question is whether the Director of Labour can make such a decision.

That question is also the foundation of the appellant's second ground of appeal. Counsel contended that on this ground as well the Director of Labour had no jurisdiction to make the award as his doing so is in disregard of s 33 and s 56 of the Industrial Relations Act 1967:

> 33(1) If any question arises as to the interpretation of any award or collective agreement taken cognizance of by the Court, the Minister may refer the question, or any party bound by the award or agreement may apply, to the Court for a decision on the question.
> (2) The Court may, upon the application of any party, by order vary any of the terms of an award, if it considers it desirable so to do for the purpose solely of removing ambiguity or uncertainty.
> (3) The parties bound by the award or agreement shall be afforded a reasonable opportunity of being heard.
> (4) The decision of the Court shall be binding in the same manner as the original award or agreement.
> (5) The expression 'Court' for the purpose of this section, means the Court by which the award was made or any other Court specially constituted under s 22 for the purpose.

Then s 56 of the Industrial Relations Act 1967 provides:

> (1) Any complaint that any term of any award or of any collective agreement which has been taken cognizance of by the Court has not been complied with may be lodged with the Court in writing by any trade union or person bound by such award or agreement.
>
> (2) The Court may, upon receipt of the complaint -
> (a) make an order directing any party -
> (i) to comply with any term of the award or collective agreement; or
> (ii) to cease or desist from doing any act in contravention of any term of the award or collective agreement;
> (b) make such order as it deems fit to make proper rectification or restitution for any contravention of any term of such award or collective agreement; or
> (c) make such order as it considers desirable to vary or set aside upon special circumstances any term of the award or collective agreement.
>
> (3) Any person who fails to comply with an order of the Court under subsection (2) shall be guilty of an offence and shall on conviction, be liable to a fine not exceeding two thousand ringgit, or to imprisonment for a term not exceeding one year, or to both, and a further fine of five hundred ringgit for every day during which such offence continues.
>
> (4) Where any sum of money is payable by any person by virtue of an order made by the Court under subsection (2), and such sum has not been paid, and the person to whom the order is directed has been convicted under subsection (3), the court before which the conviction was had may order that such sum or any part thereof remaining unpaid be recovered as if it were a fine, notwithstanding that the said sum may be in excess of the ordinary jurisdiction of such court.
>
> (5) Where anything, other than the payment of a sum of money, is required to be done or not to be done by any person by virtue of any order made under subsection (2), and the person to whom the order is directed has been convicted under subsection (3), the High Court or a Sessions Court may on the application of any person, having an interest in the thing which is so required to be done or not to be done enforce compliance with the order in respect thereof as if it were an order of the High Court or the Sessions Court, as the case may be, in accordance with such rules of court as may be applicable or in such manner as it may deem just or expedient.

Counsel submitted that since there is a specific provision for interpretation of an award under s 33 by the Industrial Court and its enforcement under s 56 thereof, the Director of Labour was therefore without jurisdiction when he made the order complained of. In doing so, he was usurping the function of the Minister of Labour and the Director General of Industrial Relations.

With respect to this second ground of appeal the appellant has succeeded. Mr Varughese from the Bar made a statement that Award No 50 applies to all employees in the security services including the respondent. I agree with his submission that the director in hearing this matter and deciding that the employer was liable to pay under Award No 50 was usurping the function of the Industrial Court for it is clear to me that the respondent in order to claim must come under either s 33 (in respect of interpretation of an Award) or under s 56 (complaint of non-compliance with an Award) of the Industrial Relations Act 1967. He would have to go to the Industrial Court for the award he obtained from the labour officer. For the reason I gave, I therefore allow this appeal and set aside the decision of the Director of Labour with costs to be taxed.

Appeal allowed.

Solicitors: *TM Varughese & Co.*

Reported by *PS Ranjan*